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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE COMPANY,  
USA CAPITAL REALTY ADVISORS, LLC,  
USA CAPITAL DIVERSIFIED TRUST DEED FUND,  
LLC,  
USA CAPITAL FIRST TRUST DEED FUND, LLC,  
USA SECURITIES, LLC,

Debtors.

**Affects:**

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Capital Realty Advisors, LLC
- ☒ USA Capital Diversified Trust Deed Fund, LLC
- ☒ USA Capital First Trust Deed Fund, LLC
- ☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR  
Case No. BK-S-06-10726-LBR  
Case No. BK-S-06-10727-LBR  
Case No. BK-S-06-10728-LBR  
Case No. BK-S-06-10729-LBR

**CHAPTER 11**

Jointly Administered Under Case No. BK-S-06-10725 LBR

**Partial Objection of USACM Trust To Mark Daniel Donnolo Claim Filed in Wrong Debtor's Case; Objection of FTDF to Proposed Allowance of Claim; and Objection of DTDF to Proposed Allowance of Claim**

Hearing Date: September 28, 2007  
Hearing Time: 1:30 p.m.

1 Mark Daniel Donnolo (“Donnolo”) filed Proof of Claim 10725-00627 (the  
2 “Claim”) against USA Commercial Mortgage Company (“USACM”) in the total amount  
3 of \$600,000. An attachment to the Claim provides an itemization of the components of  
4 the Claim. The attachment reflects that, in addition to making claims against USACM  
5 based upon loans made as a direct lender, Donnolo also makes claims against USACM  
6 based upon an alleged \$248,754 investment in USA Capital First Trust Deed Fund, LLC  
7 (“FTDF”) and an unspecified investment in USA Diversified Trust Deed Fund, LLC  
8 (“DTDF”). The Proof of Claim does not provide any supporting documentation.

9 According to the BMC claims registry, Donnolo did not file a proof of claim or a  
10 proof of interest in either the FTDF case or the DTDF case; nor do FTDF’s records or  
11 DTDF’s records show any investment made by Donnolo. However, FTDF’s records do  
12 show that the Donnolo Family Trust dtd. 8/24/88, Joseph and Loretta Donnolo, Trustees  
13 (the “Donnolo Trust”) made a \$248,754 investment in FTDF. By order of September 15,  
14 2006 (Docket No. 1293), FTDF’s list of members’ equity interests was deemed to be the  
15 list of equity interest holders filed pursuant to Bankruptcy Rule 1007(A)(3), which  
16 constituted *prima facie* evidence of the validity and amount of each respective members’  
17 equity interest in FTDF, unless an interest holder filed a proof of interest in a different  
18 amount. The Donnolo Trust did not file a proof of interest against FTDF.

19 Moreover, Joseph and Loretta Donnolo filed Proof of Claim 10728-00075 for an  
20 amount exceeding the amount of the investment (\$258,705.71). The Official Committee  
21 of Equity Security Holders of USA Capital First Trust Deed Fund, LLC (the “FTDF  
22 Committee”) made two objections to Proof of Claim 10728-00075. By order of February  
23 7, 2007 (Docket No. 2711), the Donnolo Trust’s claim was disallowed, and by order of  
24 March 21, 2007 (Docket No. 3229), the Donnolo Trust’s claim was reclassified as a proof  
25 of interest, and the amount was reduced to the amount of the Donnolo Trust’s investment  
26 (\$248,754) as reflected in Debtor’s books and records.

Similarly, DTDF's records show that the Donnolo Trust has a \$48,047.32 investment in DTDF. By order of September 15, 2006 (Docket No. 1293), DTDF's list of members' equity interests was deemed to be the list of equity interest holders filed pursuant to Bankruptcy Rule 1007(a)(3), which constituted *prima facie* evidence of the validity and amount of the each respective members' equity interest in DTDF, unless an interest holder filed a proof of interest in a different amount. Joseph and Loretta Donnolo did not file a proof of interest against DTDF.

Joseph and Loretta Donnolo filed Proof of Claim 10727-00072 against DTDF for an amount approximating the amount of the investment (\$48,047.00) shown in DTDF's records. The Official Committee of Equity Security Holders of USA Capital Diversified Trust Deed Fund, LLC, made an objection to Proof of Claim 10727-00072. By order of February 14, 2007 (Docket No. 2765), the Donnolo Trust's claim against DTDF was disallowed.

A. USACM Trust's Partial Objection to Donnolo Claim filed in the USACM Case

At this time, the USACM Liquidating Trust (the "USACM Trust") objects to that portion of the Claim related to an alleged \$248,754 investment in FTDF. Any claim Donnolo has against USACM solely on account of an investment in FTDF is derivative of FTDF's claims against USACM. Under a settlement approved by the Court on June 12, 2007, all such FTDF claims were settled, with FTDF holding a \$7.0 million allowed general unsecured claim and beneficial interest in the USACM Liquidating Trust. The equity interest holders in FTDF will share in any recovery on account of that claim.

The USACM Trust also objects to that portion of the Claim related to an unspecified investment in DTDF and asks that it be disallowed as a claim against USACM. Any claim held by Donnolo against USACM solely on account of an investment in DTDF is derivative of DTDF's claims against USACM. While the amount

1 of DTDF's claims against USACM has not been resolved, the equity interest holders in  
2 DTDF will share in any recovery on account of those claims.

3 The USACM Trust does not at this time object to that portion of the Claim that  
4 appears to relate to alleged direct lender investments in the following loans: Tanamera  
5 Resorts in an unspecified amount; Bar USA for \$100,000; Gramercy Park in an  
6 unspecified amount; and Roam Group for \$1,200,000. The USACM Trust reserves the  
7 right to make further objections to these direct lender claims.

8 B. FTDF Committee Objection to Proposed Allowance of Donnolo Claim in  
9 FTDF Case

10 The FTDF Committee further objects to any proposed allowance of the Donnolo  
11 Claim. Although FTDF's records do not show that Donnolo made any investment in  
12 FTDF, they do show that the Donnolo Family Trust dtd. 8/24/88, Joseph and Loretta  
13 Donnolo, Trustees (the "Donnolo Trust") made a \$248,754 investment in FTDF. The  
14 Donnolo Trust filed Proof of Claim No. 10728-00075 for an amount exceeding the amount  
15 of its investment. The Court disallowed the Donnolo Trust's Proof of Claim, reclassified  
16 it as a Proof of Interest, and reduced the amount asserted therein to the amount of the  
17 Donnolo Trust's investment as of the Petition Date (\$248,754). Further, by order of the  
18 court, the Donnolo Trust was deemed to have filed a proof of interest in the amount of the  
19 investment shown in FTDF'S records (\$248,754). The Donnolo Trust has since received  
20 distributions based on its FTDF membership interest to date, with no objection.

21 Thus, Donnolo is apparently asserting a claim: (1) that does not belong to him, (2)  
22 that has already been disallowed as a claim against the FTDF; and (3) that is based upon  
23 an equity interest held by the Donnolo Trust in the FTDF estate that has already been  
24 recognized. Accordingly, the FTDF Committee objects to any proposed allowance of the  
25 Claim in the FTDF case

1 C. DTDF Objection to Proposed Allowance of Donnolo Claim in DTDF Case

2 DTDF further objects to any proposed allowance of the Donnolo claim in the  
3 DTDF case. DTDF's records do not show that Donnolo made any investment in DTDF,  
4 although they do show that the Donnolo Trust holds a \$48,047.32 investment in DTDF.  
5 By order of the court, the Donnolo Trust was deemed to have filed a proof of interest in  
6 the amount of the investment shown in DTDF's records (\$48,047.32). Although the  
7 Donnolo Trust filed Proof of Claim No. 10727-00072 for an amount approximating the  
8 amount of the investment (\$48,047.00) shown in DTDF's records, the Court disallowed  
9 the Donnolo Trust Proof of Claim because the Donnolo Trust shall recover from DTDF on  
10 a pro rata basis according to its equity interest in DTDF and not on the basis of a creditor  
11 claim.

12 Thus, Donnolo is apparently asserting a claim: (1) that does not belong to him, (2)  
13 that has already been disallowed as a claim against the DTDF; and (3) that is based upon  
14 an equity interest held by the Donnolo Trust in the DTDF estate that has already been  
15 deemed allowed. Accordingly, DTDF objects to any proposed allowance of the Claim in  
16 the DTDF case.

17 This objection is made pursuant to Bankruptcy Code section 502, Federal Rule of  
18 Bankruptcy Procedure 3007, and Local Rule of Bankruptcy Practice 3007.

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Dated: August 28, 2007

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